

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 993 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DHARMINDERSINGH HARBANSINGH SOHAL

Versus

STATE OF GUJARAT

Appearance:

[MR YS LAKHANI for Petitioners
Mr. Y.F.Mehta APP for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 01/11/96

ORAL JUDGEMENT

This petition is filed by the accused in CR. No. 202/96 registered at the Satellite Police Station, Ahmedabad on the strength of a complaint lodged by Ramandip S. Bagga wife of the petitioner no.1 against the order passed by the learned Addl. City Sessions Judge, Ahmedabad dated 24.7.96 in Cri. Revision Application No.148/96.

2. Ramandip S. Bagga has filed a complaint with the Satellite Police Station, Ahmedabad against her husband alleging therein that after their marriage on 27.11.93 she went to dwell with her husband. But in her matrimonial home, she was treated with mental and physical cruelty and ultimately, she was driven out of the house on 9.11.94. At that time her Stridhana property mentioned in the schedule annexed to the her complaint was not returned. Present petitioners were arrested on 24.5.96 and that police custody was ordered upto 28.5.96 and thereafter their house was searched and property worth Rs. 3,12,384/- was recovered from the house of the present petitioner. It was also mentioned during the said house search that property worth Rs. 2,06,450/- consisting of clothes and ornaments were taken away by the complainant when she went to the parental house and that she was not driven out of the house. Thereafter on 20.5.96 a report was filed by the Investigating Officer and in the said report it was mentioned that the property of the cash of Rs. 1,53,600/- and the property which is said to have been taken away by the wife at the time of her leaving the house, was to be recovered from the accused and therefore, they should be remanded to police custody for 7 days. Learned Metropolitan Magistrate by a speaking order, rejected the said claim of the Investigating Officer and therefore, the State had gone in Revision before the learned City Sessions Judge, Ahmedabad and the learned Addl. City Sessions Judge, Ahmedabad by his order dated 24.5.96 granted police custody for five days and hence the accused have come before this court by preferring this petition.

3. Learned Additional City Sessions Judge has granted the said police custody by holding that said police custody is to be granted for the purpose of recovering the alleged misappropriated property. As per the report of the Investigating Officer, the property which had remained to be recovered was the cash amount of Rs. 1,53,600/- and the property worth Rs. 2,06,450/which the accused-petitioner claimed to have been taken away by the complainant while leaving the matrimonial house. It must be mentioned here that cash amount of Rs. 1,53,600/- was not a property which was having any specific demarcation or marking which could be said to be recovered by the order of detention. That was the amount given to the accused at the time of marriage ceremony. Another cash amount was also claimed by the complainant in her complaint and that amount was also not having any specific and particular marking so that the it

could be said that if police custody is not granted, then it would not be possible to recover the said property. It must be noted that in criminal prosecution there should be any question of deciding civil rights of a person to get the property but the property is to be recovered only with a view to connect the accused with the crime alleged to have been committed by the accused. Therefore, in the circumstances, the grant of police custody for the recovery of Rs.1,53,600/-would not be at all justified.

4. Admittedly as per the case of the complainant herself she was driven out of the house on 9.11.94 and she has lodged her complaint on 6.4.96. Thus the complaint has been filed for more than one year and five months. The case diaries which were produced by the investigating officer along with his report seeking police remand clearly mentions that when the accused was told about the recovery of the alleged misappropriated property, they had allowed the investigating officer to take search of the whole house and accordingly the house was searched and every thing that could be traced has been sized and recovered from the accused. Now if that is the position it could be said that by the detention of the accused, no further purpose would be served in recovering the property. It must be remembered that it is not a property which was stolen by the accused but it is the property said to have been entrusted to the accused and when the accused is contending that that property has been taken away when she left the matrimonial home and pursuant to her complaint the whole house of the accused has been searched and nothing was left in the house, the view taken by the learned Metropolitan Magistrate in refusing to grant police custody could not be said to be illegal or perverse so as to justify the the interference of the learned Addl.City Sessions Judge by exercising his revisional jurisdiction. In the case of Miss Harsh Sawhney vs. Union Territory (Chandigarh Admn) AIR 1978 SC 1016 the following principles are laid down by the Apex Court.

" In the facts and circumstances of the case, the Supreme Court considered that the accused should be enlarged on bail and the necessity of making a search of the premises of the accused in her presence and the necessity of her presence for interrogation in connection with investigation were no grounds for taking the accused into custody. "

5. The the accused were arrested on 24.5.96. They

were initially remanded to police custody till 28.5.96. If the provisions of section 167(2) Cr.P.C. are considered, then it would be quite clear that remand of the accused to the police custody can be for 15 days only and that too from the date of the first orders as has been held by the Apex Court in the case of CBI Special Cell Investigation Cell vs. Anupam J. Kulkarni 1992 SC 1768 So far as the present accused the learned Addl.City Sessions Judge was not justified to pass an order dated 24.7.96 to remand the accused to police custody after more than two months since the date of the first order.

6 If the reasons given by the learned Metropolitan Magistrate in refusing to grant police custody are considered, then it would be quite clear that he has given, clear and cogent reasons for refusing the police custody. He had not committed any illegality or irregularity so as to justify the interference by the said order passed by the learned Addl.City. Sessions Judge by exercising his revisional jurisdiction.

7. It must also be mentioned here that the marriage between the complainant and the accused no.1 had taken place in Delhi and the matrimonial house of the complainant and the house of the accused is in Delhi. The property was entrusted to him at Delhi. Therefore, that circumstances ought to be borne in mind while considering the claim of the complainant to have the police custody of the accused.

8. Therefore, in view of the above circumstances I hold that the order passed by the learned Addl.Sessions Judge setting aside the order of the learned Metropolitan Magistrate, Ahmedabad and granting police custody of the applicants for five days was not at all justified. In the circumstance of the case, I hold that order passed by the learned Addl.City Sessions Judge, Ahmedabad will have to be quashed and set aside and the order passed by the learned Metropolitan Magistrate will have to be confirmed and the present application will have to be allowed. Hence the order passed by the learned Addl.City Sessions Judge, Ahmedabad is hereby quashed and set aside and the order passed by the learned Metropolitan Magistrate is confirmed. The application is allowed. Rule is made absolute. Ad.interim relief granted earlier stands confirmed.

In view of the decision in the main matter no

order is required to be passed in Misc. Cri.Application
No. 3577/96.

(S.D.Pandit.J)